IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9387 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHCHANDRA GULABBHAI NAIK

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 9387 of 2004

MR JB PARDIWALA for Petitioner No. 1

MR AY KOGJE, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 05/10/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. JB Pardiwala for the

petitioner. Considering the nature of the prayer advanced by the present petitioner in this petition, the question cropped up before the Court is whether the petitioner ought to have invoked revisional jurisdiction or extra-ordinary jurisdiction of this Court. During the oral submissions, ld. counsel Mr. Pardiwala for the petitioner has pointed out that the ld. Sessions Judge while dealing with the application made for a limited prayer has refused to exercise discretionary jurisdiction and refusal to exercise jurisdiction would also give rise rise to the petition under Sec.482 of CrPC. It is not a matter of dispute that when two types of petitions could have been moved, then a party can opt to file any one of the two.

2. I have carefully gone through the earlier order passed by the Court enlarging the petitioner accused on bail by imposing certain conditions vide order dated 17.04.2004 and subsequent order i.e. order under challenge passed by ld.Sessions Judge, Navsari dated 28.09.2004 while disposing of Cri. Misc.Application No.187/2004. Undisputedly, the present petitioner has been to foreign country and on return, he has surrendered his passport. It was not at all necessary for the ld. Sessions Judge to go into the merits of the case as the same was already considered by the ld.Sessions Judge while dealing with main petition. Ld. Sessions Judge, in view of the nature of the reliefs prayed by the petitioner, ought not to have rejected the prayer to hand over the passport for a limited period.

3. So, without entering into further discussion, the present petition can be disposed of today by issuing necessary directions.

4. Hence, Rule. Ld. APP Mr. AY Kogje appears and waives service of the Rule for the respondent State. Rule is fixed forthwith.

5. In view of above set of facts and the contentions raised in the petition that the petitioner is a vegetable merchant and he is to visit many countries and especially countries of Middle East, Canada and Australia, the passport can be returned back to the petitioner on some conditions and with further directions so that he can surrender it back to the Court on his return. Ultimately, the petitioner is facing the prosecution instituted by a Bank holding adequate surety and properties of the petitioner mortgaged with the Bank. The petitioner being an Indian citizen holding Indian passport and doing business in India, it would be wrong to presume that he would be permanently away from the country. His family including his wife is in India. These facts could not have been ignored by the ld. Sessions Judge at all.

6. The Apex Court in the case of Samarendranath Bhattacharyaji v/s State of West Bengal & Ors., reported in 2004 AIR SCW 4970, has observed while dealing with the order passed by the Kolkatta High Court that "going into merits of the case and giving findings on factual issues is not proper". The Apex Court was dealing with the order cancelling the bail granted by the trial Court. In the present case, the petitioner has been granted bail on merits and had approached with a limited plea. So, observations of the Apex Court in paras 11, 12 & 14 of the above-cited decision would help the petitioner.

7. For short, the impugned order dated 28.09.2004 passed by ld. Sessions Judge, Navsari in Cri.Misc. Application No. 187/2004 is hereby quashed and set aside. Ld. Sessions Judge, Navsari is hereby directed to hand over passport to the present petitioner on his furnishing solvent surety of Rs.25,000/ (Rs. Twenty Five Thousand only) and shall hand over the passport on or before 29.10.2004. The petitioner is also directed that he shall intimate about his journey programme in detail to the concerned police station in writing and on his return, shall surrender his passport back to the Court on or before 31.01.2005. It would be open for the petitioner to pray for extension in case of extreme difficulties.

8. Rule is made absolute accordingly.
Direct Service is permitted.

[C.K. BUCH, J]
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